IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 268 of 2000

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SIHOR NAGARPALIKA - Petitioner(s)

Versus

SAFAI KAMDAR SANGH - Respondent(s)

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Appearance :

MR MANISH R BHATT for Petitioner No(s).: 1.

MR RK MISHRA for Respondent No(s).: 1.

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CORAM : HON'BLE MR JUSTICE KS JHAVERI

Date : 26/07/2005

ORAL JUDGMENT

1.0 The petitioner Nagar Palika has challenged the award dated 10.02.1999 passed by the Labour Court, Bhavnagar in Reference LCBD No.7 of 1988, whereby the said reference was partly allowed and the demands being Demands no.6 & 7 of the respondent Union were granted and the petitioner

was directed to create Posts and to give permanency to the respondents workmen w.e.f. 01.08.1997.

2.0 The brief facts of the case are that the respondent Union had raised a Charter of Demand before the petitioner Nagar Palika. On submission of the failure report, reference was made to the Labour Court, Bhavanagar. The Labour Court, vide impugned award, partly accepted the said Demand as aforesaid. Hence, this petition.

3.0 Mr. M R Bhatt learned advocate for the petitioner has contented that the workmen herein were not regularly appointed employees and that by passing the impugned award, the Labour Court has failed in considering the fact that there would be additional financial burden on the petitioner Nagar Palika. He has submitted that the aforesaid fact was pointed out to the Labour Court, but, the Labour Court had not considered the same.

3.1 Mr. Bhatt learned advocate for the petitioner has relied upon a decision of ths Court in the case of Amreli Municipality v. Gujarat Pradesh Municipal Employees Union reported in 2004 (2) G.L.H. pg.692, and, more

particularly, Para 12.1. The said Para reads as under;

> “12.1 After considering the decisions cited before us, the following principles emerge :
>
> (A) No regularisation or permanency can be effected dehors the statutory provisions or the guidelines.
>
> (B) Long service put in by the workmen itself may not be a ground to regularise services of ad hoc / temporary workmen against the sanctioned set-up without following statutory procedure of recruitment. At the most, Labour Court / Industrial Tribunal can issue direction for consideration of absorption subject to availability of posts on the establishment.
>
> (C) To avoid nepotism and corruption, no back-door entry in service;
>
> (D) Financial capacity of the local body to have additional burden is a relevant consideration to be kept in mind while ordering regularisation or absorption.”

He has, therefore, submitted that the direction issued by the Labour Court is contrary to the Full Bench decision and hence, the same is required to be quashed and set aside.

4.0 Mr. R.K. Mishra learned advocate for the respondent has contended that the main reason which had weighed with the Labour Court was the long period of service rendered by the workmen. He has, therefore, submitted that the

Labour Court was completely justified in passing the impugned award.

5.0 I have heard learned counsel for the parties and perused the documents placed on record. In view of the principle laid down by this Court in the aforesaid decision, the contention raised by Mr. Bhatt is required to be accepted. In my opinion, the Labour Court, by passing the impugned award, has traveled beyond the scope of the reference and has failed to take into consideration the aspect of financial liability on the petitioner Nagar Palika that may occur on account of the said appointments. Hence, the impugned award of the Labour Court is illegal and perverse and deserves to be quashed and set aside.

6.0 For the foregoing reasons, this petition is allowed. The impugned award dated 10.02.1999 passed by the Labour Court, Bhavnagar in Reference LCBD No.7 of 1988 is quashed and set aside. Rule is made absolute accordingly with no order as to costs.

(K. S. JHAVERI, J.)

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